



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Louisville Cooler Manufacturing Company
File: B-243546
Date: June 13, 1991

George Clark for the protester.
Philip F. Eckert, Jr., Esq., Defense Logistics Agency, for the agency.
Linda C. Glass, Esq., and Andrew T. Pogany, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that product awardee intends to furnish does not comply with specification is dismissed where request for proposals did not ask offerors to identify product they intended to supply, but instead requested only prices; by submitting a price, the awardee offered to provide the required product in conformity with the specification and acceptance of its offer obligated it to do so. Whether or not awardee complies with this obligation is a matter of contract administration not for review by the General Accounting Office.

DECISION

Louisville Cooler Manufacturing Company protests the Defense General Supply Center's (DGSC) award of a contract to Bangor Refrigeration Corporation under request for proposals (RFP) No. DLA400-91-R-0668 for 13 glass reach-in merchandiser refrigerators of varying door sections and lengths. Louisville contends that the refrigerators offered by Bangor were not compliant with the RFP requirements.

We dismiss the protest.

The RFP, issued on December 11, 1990, provided detailed specifications for the refrigerators and contained ten line items. The RFP did not require firms to submit technical proposals. The RFP did not contemplate any detailed technical evaluation since it did not contain any technical evaluation factors. The RFP provided for multiple awards to the low-priced, responsible offerors.

Louisville and Bangor were the only two offerors responding to the RFP. Both offerors were requested to submit best and final offers (BAFOs) by February 14, 1991. Neither offeror took any exception to the solicitation specifications. On March 4, the agency made split awards to Bangor and Louisville. The agency awarded a contract to Bangor for line item Nos. 0001, 0002, 0005, 0006, and 0008 for a total of \$73,805, and a contract to Louisville for line item Nos. 0003, 0004, 0007, 0009, and 0010 for a total of \$52,973.

After learning of the award, Louisville filed an agency-level protest in which it argued, based on Bangor's commercial literature, that Bangor's refrigerators did not meet the minimum door sill height of 25 inches. In a subsequent letter to the agency, Louisville further argued that Bangor's refrigerators did not meet the RFP specification for overall length. Before the agency could respond to the agency-level protest, Louisville filed this protest with our Office on April 5.

In its protest filed with our Office, Louisville contends that Bangor's refrigerators offered under line items 0001, 0002, 0005 and 0006 did not meet the RFP requirement for minimum door sill height of 25 inches and that the refrigerator offered under line item 0006 did not meet the specification for overall length of 144 to 150 inches. Louisville alleges that its protest was based on its review of Bangor's standard commercial literature and a telephone call to Bangor where it was informed that Bangor's door sill height was only 17 inches and the overall length available from Bangor for a 5-door freezer was 153 inches.

We conclude that award to Bangor was proper. As stated above, the RFP did not request technical proposals or otherwise ask offerors to identify the particular model of refrigerator that they intended to furnish and nowhere in its offer did Bangor identify the model that it intended to supply. Offerors were asked for prices only and, by submitting a price, Bangor offered to provide the required items in conformity with the specifications.^{1/} The acceptance of Bangor's offer obligated that firm to supply refrigerators in accordance with the specifications. Whether Bangor does in fact comply with this obligation is a matter of contract administration which our Office will not review. Bid Protest Regulations, 4 C.F.R. § 21.3(m)(1) (1991); Trados GmbH--Second Request for Recon., B-237919.3, Jan. 12, 1990, 90-1 CPD ¶ 53.

^{1/} In fact, in response to this protest, Bangor has confirmed that it will comply with the specifications.

Further, to the extent the protester is questioning Bangor's ability to supply conforming equipment, this concerns the firm's responsibility. Where, as here, the contracting officer has determined a firm responsible, we will not review an affirmative determination of responsibility absent a showing of possible fraud or bad faith or that definitive responsibility criteria have been misapplied. Automatic Screw Mach. Prods. Co., B-238583; B-238584, June 1, 1990, 90-1 CPD ¶ 519. Since Louisville has raised no such allegations concerning the agency's determination of Bangor's responsibility, we find the award to Bangor proper.

Louisville, in subsequent correspondence submitted to our Office on June 4, argued that Bangor's statement, contained in the agency report, that it would modify its refrigerators to meet the specifications, does not comply with the solicitation requirement for commercial products. We find this issue to be untimely raised. Louisville received the agency report on May 10. Protests based on other than apparent solicitation defects must be filed within 10 days after the basis of protest is known or should have been known. 4 C.F.R. § 21.2(a)(2). Here, Louisville knew this basis for protest on May 10 when it received the agency report. Since this issue was not raised with our office until June 4, more than 10 working days after receipt of the agency report, it is untimely.

The protest is dismissed.



Michael R. Golden
Assistant General Counsel